BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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| In the Matter of<br><br>Federal-State Joint Board on<br>Universal Service | CC Docket No. 96-45 |

**COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION**


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The People of the State of California and the California Public Utilities Commission ("California" or "CPUC") hereby submit these comments in response to the Notice of Proposed Rulemaking ("NPRM"), released by the Federal Communications Commission ("FCC") on June 9, 2003, in the above-captioned docket. In this NPRM, the FCC seeks comment on the Recommended Decision of the Federal-State Joint Board on Universal Service ("Joint Board").[1]

## I. BACKGROUND

On March 27, 2003, the Joint Board recommended several modifications to the Lifeline and Link-Up programs, two federal universal service support programs that

[1] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, 18 FCC Rcd 6589 (2003) ("Recommended Decision").

enable low-income customers to have basic telephone service at affordable rates. Specifically, the Joint Board proposed to expand the default federal eligibility criteria to include an income-based standard of 135 percent of the Federal Poverty Guidelines ("FPG"), the Temporary Aid to Needy Families program, and the National School Lunch free lunch program. While strongly urging states to adopt this standard, the Joint Board declined to recommend a national eligibility standard for states that currently provide Lifeline/Link-Up support.

The Joint Board also recommended that the FCC require states, under certain circumstances, to adopt verification procedures. Currently, the FCC requires self-certification, under penalty of perjury, as the federal default rule for enrollment in the Lifeline/Link-Up programs, and the Joint Board proposes no change. The Joint Board further supports continuing to allow states the flexibility to require more stringent measures for certification, as they deem appropriate. The Joint Board, however, proposes to require states to verify that consumers who are eligible for the federal Lifeline/Link-up programs based on an income criterion produce documentary evidence of income eligibility prior to their enrollment in these programs. In addition, the Joint Board recommends that customers be required to self-certify, under penalty of perjury, the number of individuals in their household. Verification would not be necessary for consumers who qualify for these programs because of their enrollment in other public assistance programs. The Joint Board would give states one year in which to adopt new verification procedures.

In addition, to more effectively target low-income consumers, the Joint Board recommended that the FCC provide outreach guidelines to states and carriers. The Joint Board, however, agreed with commenters not to require specific outreach procedures, and concurred that states and carriers should have the flexibility to adopt their own specific standards and engage in outreach themselves. At the same time, the Joint Board recommended that the FCC adopt voluntary information collection procedures whereby states would provide feedback on whether the changes to the eligibility and verification requirements of the Lifeline/Link-Up programs have improved telephone penetration rates. States would also be asked to report any administrative burdens and inefficiencies that they may have experienced, and to suggest modifications. The Joint Board proposed a survey for garnering this information, and sought comment on its format and questions.

Next, the Joint Board recommended that the FCC encourage states to implement rules that require carriers to offer Lifeline service to consumers who may have been previously disconnected for failure to pay toll charges. According to the Joint Board, carriers often prohibit consumers who have prior outstanding balances for local or long distance service from signing up for local service even though they qualify for the

Lifeline/Link-Up programs.[2] In response, the Joint Board proposes to modify the federal programs to directly address barriers posed by outstanding unpaid balances, for example, by enabling low-income customers to use program funds to pay off such balances.

For those customers who no longer meet eligibility requirements for the federal programs, the Joint Board proposes to give customers up to 60 days to file an appeal. Customers would continue to receive benefits pending their appeal until a final decision was issued. This proposal applies only to carriers in states that have not adopted their own programs, or in states that have adopted the federal default criteria.

In comments filed December 31, 2001, the CPUC responded to most of these proposals. A copy of the CPUC's comments is attached hereto. In this NPRM, the FCC asks parties to comment once again on the Joint Board's proposals now that they have been formally recommended for adoption by the FCC. In addition, the FCC proposes minor changes to clarify and streamline its rules.

In these comments, the CPUC addresses two recommendations – the expansion of the Lifeline/Link-Up programs to enable customers to qualify on the basis of income in lieu of their participation in certain federal public assistance programs; and the requirement that states, in certain circumstances, adopt verification procedures for

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[2] As the Joint Board correctly recognized, the FCC lacks authority to require states to adopt a no-disconnect rule for non-payment of toll charges. Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393, 421-425 (5th Cir. 1999). In California, customers with unpaid toll service balances must agree to toll blocking services in order to remain eligible for universal lifeline telephone service under the state program.

continued participation in the Lifeline/Link-Up programs. In comments before the Joint Board, the CPUC opposed these proposals, and reiterates its opposition here.

## II. THE FCC SHOULD NOT EXPAND THE CURRENT PROGRAM-BASED DEFAULT FEDERAL ELIGIBILITY CRITERIA TO INCLUDE INCOME-BASED CRITERIA IN STATES THAT DECLINE TO ADOPT AN INTRASTATE UNIVERSAL SERVICE PROGRAM

Currently, customers are eligible for the federal Lifeline/Link-Up programs in one of two ways. In those states that lack their own universal service programs, customers may qualify for the federal programs if they participate in one of certain specified federal public assistance programs, including Supplemental Security Income, federal public housing assistance, or Medicaid. In those states that do offer universal service programs, such as California, customers must meet the eligibility criteria established by the state. So long as this criteria is based on income, or factors directly related to income, the states have flexibility in prescribing the particular eligibility criteria. Customers who qualify for the state program under the state criteria may also receive funds from the federal Lifeline/Link-Up programs.

In its Recommended Decision, the Joint Board proposes that the current program-based default federal eligibility criteria be expanded to include an income-based standard. While the Joint Board strongly urges states to adopt the federal income-based standard, it does not recommend that the FCC impose a national eligibility standard on those states that currently provide Lifeline/Link-Up support, such as California.

California concurs with the Joint Board's recommendation not to require states to adopt federal eligibility criteria in their respective state programs, or to require a national eligibility standard. As discussed in our comments to the Joint Board, Section 254(f) of the 1996 Act clearly contemplates independent and complementary state universal service programs so long as they do not burden the federal program. The Act also allows states to augment the definition and expand the scope of universal service.

In our comments, the CPUC also urged the Joint Board not to expand the existing eligibility standards for the Lifeline/Link-Up programs to include income-based criteria as an additional means to qualify. As the CPUC explained, extending these programs to low income customers who do not otherwise qualify for federal public assistance programs, and who reside in states that have not adopted a state universal service program, imposes a greater burden on ratepayers in states like California who already are substantial contributors to the federal program. California is particularly concerned that a state that lacks a state-funded universal service program would have little, if any, incentive to create and fund such a program if federal funding is now available.[3] At the same time, California ratepayers would be forced to assume a greater share of the financial burden in funding an expanded federal program that subsidizes those states that decline to adopt their own programs. In the meantime, because California qualifies

[3] Moreover, as discussed in Section III, infra, states that provide no matching intrastate support would lack the incentive to control the overall size of the federal program or to guard against fraud or abuse that drives up program costs.

participants at 150 percent of the federal poverty level, California would realize no expansion in participation by California customers under the federal program. In fact, under an expanded federal program at greater cost to California ratepayers, California could potentially see a reduction in the amount of federal Lifeline funds currently available to its customers. California respectfully submits that this result is inequitable and unwarranted.

Under current rules, if a state desires to receive federal Lifeline subsidies based on income, it is free to implement its own state Lifeline program based on that criteria, and by doing so will then qualify for federal Lifeline assistance. Current rules thus ensure that the federal programs, supported by a surcharge borne by all customers nationwide, is maintained at a reasonable level. Current rules are also consistent with Congress' intent under the 1996 Act that states have freedom to develop their own universal service programs to target particular needs within each state. Such rules further recognize that the federal jurisdiction should not assume the entire responsibility for ensuring universal service.

In contrast, the proposed rule to expand federal eligibility criteria to low income customers in states that decline to fund universal service effectively does little more than shift the a greater share of the burden of supporting the federal programs from the individual state to all states. The CPUC believes that this result is inconsistent with Congressional intent under the 1996 Act.

## III. ADDITIONAL VERIFICATION PROCEDURES RECOMMENDED BY THE JOINT BOARD ARE NEITHER NECESSARY NOR COST-EFFECTIVE IN STATES THAT HAVE ADOPTED INTRASTATE UNIVERSAL SERVICE PROGRAMS

As the CPUC's previous comments before the Joint Board make clear, the CPUC does not believe that it is necessary to require states to verify a customer's continued eligibility in the Lifeline/Link-Up programs when such eligibility is based on income. Nevertheless, the Joint Board recommends that states require customers who qualify for these programs on the basis of income criteria to self-certify under penalty of perjury the number of individuals in their household. According to the Joint Board, "[s]uch a measure is required for verifying income-eligibility at or below 135% of the FPG, because the number of people in a household may not be readily apparent depending on the type of documentation presented." Recommended Decision, ¶ 44.

As discussed in our comments to the Joint Board, the FCC concluded in its Universal Service Order, 12 FCC Rcd 8776, 8975, that in the interest of federal-state comity, states should be given the discretion to determine the appropriateness of verifying customers' continuing qualification for the Lifeline program. Specifically, the FCC observed that states which provide matching intrastate Lifeline support have a strong incentive to control fraud, waste and abuse of the support mechanism. The FCC further reasoned that because states that are generating matching intrastate support have a keen interest in controlling the size of the support mechanism, the FCC did not find that imposing stricter federal verification requirements was necessary to ensure that the size of the support mechanisms remains at reasonable levels.

The Joint Board offers no explanation in its Recommended Decision for why the FCC's previous views are no longer valid. In addition, the Joint Board simply dismisses without explanation comments, including those of the CPUC,[4] that the cost of a verification procedure would exceed losses resulting from any fraud or abuse. The Joint Board likewise dismisses without explanation the CPUC's concern that requiring verification could be detrimental to California's outreach efforts, and reduce rather than enhance universal lifeline telephone service in California. In California, eligible customers are made aware at the time they self-certify for the initiation or annual recertification of service under the state universal program that the CPUC may audit and verify a customer's continuing participation therein. Because state monies are expended, the CPUC has very incentive to uncover fraud or abuse. California thus urges the FCC to continue to leave it to the states that have adopted their own universal service programs to determine the cost-effectiveness of verifying eligibility for the federal programs. California, however, does agree that it would be appropriate to adopt federal verification procedures for those states that lack intrastate programs but receive federal universal service funding.

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[4] Letter from Jack Leutza, California Public Utilities Commission, to William F. Caton, dated January 28, 1997 (filed ex parte).

In sum, the CPUC opposes the Joint Board's recommendation to require states which have adopted their own universal service programs to adopt verification procedures to document a customer's continued eligibility for the Lifeline/Link-Up programs when such eligibility is based on income. The burden in adopting such procedures does not outweigh the perceived benefit of reducing fraud and abuse.

## IV. CONCLUSION

For the reasons stated, the CPUC recommends that the FCC not expand the eligibility criteria for the federal Lifeline/Link-Up programs in states that have declined to adopt intrastate universal service programs. In addition, states that have adopted their

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own universal service programs and otherwise receive federal Lifeline/Link-Up funding should continue to have full discretion to determine the cost-effectiveness of verifying eligibility for universal service support.

Respectfully submitted,

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The People of the State of California and the California Public Utilities Commission (California or CPUC) hereby file these comments in response to the *Public Notice* (PN), released October 12, 2001, by the Federal-State Joint Board on Universal Service (Joint Board) of the Federal Communications Commission (FCC or Commission) regarding its review of Lifeline/Link-Up, two federal support programs that are used to preserve and advance universal service and to ensure that quality telecommunications and information services are available to low-income consumers at just, reasonable, and affordable rates, as required by the Telecommunications Act of 1996 (1996 Act). The Commission has set forth a number of issues in this *Public Notice* and the CPUC comments here only on some of these issues. Silence on the other issues connotes neither agreement nor disagreement with the Commission's proposals.

## V. INTRODUCTION AND SUMMARY

Since 1984, the Commission, in conjunction with the states and local telephone companies, has offered a Lifeline program designed to promote universal service by providing low-income individuals with monthly discounts on the cost of receiving telephone service.[5] The Commission also established "Link-Up America," a program designed to help low-income individuals pay the initial costs of commencing telephone service.[6] In 1996, the Commission maintained the basic framework for administering the Lifeline program that existed prior to the adoption of the *Universal Service Order*. The Commission continued the basic structure for administering Lifeline/Link-Up qualification in states that provide matching support from the intrastate jurisdiction, with the criteria established by the state commission to be based solely on income or factors directly related to income.[7] In states that choose not to provide matching support from the intrastate jurisdiction, the Commission also adopted the Joint Board's recommendation to apply a specific, means-tested eligibility standard, by requiring participation in Medicaid, food stamps, Supplementary Security Income (SSI), federal public housing assistance (Section 8), or Low Income Home Energy Assistance Program (LIHEAP), in order for an individual to be eligible for Lifeline/Link-Up.[8]

California's Universal Lifeline Telephone Service (ULTS) program was created in 1983 in response to the enactment of the Moore Universal Telephone Service Act.[9] The purpose of the ULTS program is to provide low-income households with access to affordable basic telephone service. To achieve this purpose, telecommunications utilities providing local exchange residential service (utilities) are required to provide basic telephone service to low-income households at substantially reduced rates. Utilities are able to recover from the ULTS Fund their costs to provide ULTS, including the difference between each utility's normal tariffed rates for basic service and the

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[5] *See MTS and WATS Market Structure, and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Recommended Decision, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325 (rel. Nov. 23,1984) (recommending the adoption of federal lifeline assistance measures); *MTS and WATS Market Structure, and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Decision and Order, CC Docket Nos. 78-72 and 80-286, FCC 84-637, 50 Fed. Reg. 939 (rel. Dec. 28, 1984) (adopting the Joint Board's recommendation).

[6] *MTS and WATS Market Structure, and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Report and Order, CC Docket Nos. 78-72 and 80-286, 2 FCC Rcd 2953 (1987), Memorandum Opinion and Order on Reconsideration, 3 FCC Rcd 4543 (1988).

[7] *Recommended Decision*, 12 FCC Rcd 87, 303 (1996).

[8] *Universal Service Order*, 12 FCC Rcd 8776, 8973 (1997).

[9] Pub. Util. Code section 871, et seq.

discounted rates charged to customers participating in the ULTS program.[10] The ULTS program is currently funded by a surcharge on all end users' bills. The CPUC's General Order (G.O.) 153 governs the administration of the ULTS program. At the program's inception, to qualify for ULTS, a consumer had to meet a means test based on 150% of the poverty level. Since then, the ULTS income limits have been adjusted annually for inflation and so a strict percentage is no longer applicable.

Another aspect of California's ULTS program, similar to the FCC's Link-Up program, is discounted service connection and conversion charges. ULTS eligible consumers pay the lower of $10 or 1/2 of the utility's connection or conversion charge. Conversions are defined as a change of class type or grade of service.

### A. The Effectiveness of the Current Lifeline/Link-Up Program

The Joint Board seeks comment on the effectiveness of the Commission's existing Lifeline/Link-Up rules. The CPUC set an initial goal of a 95% telephone subscriber penetration rate with particular attention paid to reaching out to under-represented groups and enrolling ULTS eligible, but not yet participating residents. The 95% telephone subscriber penetration rate goal has been reached, but California continues to develop ways to achieve greater penetration, especially in ULTS subscribership. As described below, California will be implementing in 2002 a program to enhance outreach to potential ULTS subscribers.

### B. Eligibility Criteria

As mentioned above, to qualify to receive Lifeline in states that do *not* provide state Lifeline support, a consumer must participate in one of the following programs: Medicaid; food stamps; Supplemental Security Income; federal public housing assistance; or Low-Income Home Energy Assistance Program. To qualify to receive Lifeline service in states that provide state Lifeline service support, a consumer must

[10] CPUC General Order (G.O.) 153. Recovery is capped at the level of reimbursement of the incumbent carrier.

meet the criteria established by the state commission. States may choose their eligibility criteria so long as those criteria measure income or factors directly related to income.

The Joint Board seeks comment on whether the current eligibility criteria should be modified. In particular, the Commission seeks comment on whether all states should be required to include, at a minimum, the federal eligibility criteria in their respective programs or whether the Commission should adopt one national standard for purposes of eligibility. California believes that states should *not* be required to include the federal eligibility criteria in their respective programs nor should the Commission adopt a national eligibility standard. Rather, the current requirement, that a consumer must meet the criteria established by the state commission so long as it is based on income or factors directly related to income, is appropriate and should be preserved. As mentioned above, California's ULTS program is based on income. The Act clearly contemplates complementary state universal service programs, such as California's ULTS program. Section 254(f) provides that states have authority to implement universal service programs as long as they do not burden the federal program. The Act also allows latitude for states to augment the definition and expand the scope of universal service.

The Commission also invites comment on whether eligibility based on income level should be added to the existing eligibility standards as an additional means to qualify for Lifeline/Link-Up. California interprets this to mean the Commission is asking whether to relax the Lifeline/Link-Up's eligibility standard, even for states without their own state Lifeline program, so that a customer could qualify for Lifeline with an income level higher than what is required to meet the low-income assistance programs used currently. California believes that the existing eligibility standards for Lifeline/Link-Up should remain the same and eligibility based on income level should *not* be added as an additional means to qualify for Lifeline/Link-Up. California is concerned that this proposal that may be designed to make lifeline support available to all low income consumers, including those in states that do not currently participate in the program, may have little effect other than shifting the burden of supporting low income programs from the state to the federal jurisdiction. The Commission does not need to assume the entire responsibility for ensuring universal service. As stated above, the Act clearly contemplates complementary state universal service programs, such as California's ULTS program. States are in a better position to more finely tune their universal service program to match the needs of its consumers. Moreover, states that provide their own state Lifeline support, in furtherance of the Commission's goals to provide low-income households with affordable basic telephone service, should continue to have the discretion to determine its eligibility standards for its state lifeline program so long as it is based solely on income or factors directly related to income. States that use state funds to provide matching intrastate Lifeline support should have the benefit of receiving Federal Lifeline based on that state's broader lifeline eligibility criteria.

Conversely, states that do *not* participate in Lifeline, and therefore do not contribute their own state funds to provide discounted service for low-income, households, should not necessarily receive any federal Lifeline based on a broader eligibility criteria. If that state desires to receive federal Lifeline based on income it is free to implement its own state Lifeline program based on that criteria. Moreover, states that generate support from the intrastate jurisdiction have a strong interest in controlling the size of the support mechanism and have an incentive to control fraud, waste, and abuse of the support mechanism.

### C. Application/Verification

The Joint Board seeks comment on whether an individual's eligibility to receive Lifeline/Link-Up support should be verified, and if so, what the federal verification measures should be. California continues to support the Commission's conclusion in the *Universal Service Order* that the history of federal-state comity in administering the Lifeline program justifies allowing states to determine whether to verify eligibility.[11] The Commission provided that states which provide matching intrastate Lifeline support should continue to have the discretion to determine the appropriateness of verification of

[11] *Universal Service Order,* 12 FCC Rcd 8776, 8975.

Lifeline customers' qualification for the program. The Commission found that states that generate support from the intrastate jurisdiction have an incentive to control fraud, waste, and abuse of the support mechanism. The Commission reasoned that because states that are generating matching intrastate support have a strong interest in controlling the size of the support mechanism, the Commission did not find that imposing stricter federal verification requirements is necessary to ensure that the size of the support mechanisms remains at reasonable levels. In addition, California has previously submitted to the Commission that California allows customers to self-certify their eligibility for Lifeline because studies indicate that the cost of verifying eligibility would exceed losses resulting from fraud and abuse.[12] Moreover, as mentioned before, California's policy is to reach out to under-represented groups and enroll as many ULTS eligible residents as possible. California also has concerns that requiring verification could be detrimental to our outreach efforts and reduce rather than enhance ULTS subscribership in California. In addition, customers are made aware at the time they self-certify for ULTS participation that the CPUC may audit and verify a customer's eligibility to participate in the ULTS program.[13]

### D. Outreach

The Commission also invited comment on whether more extensive consumer education and outreach efforts are necessary to increase participation in the Lifeline/Link-Up program. In addition, the Commission also seeks comment on whether the Commission should adopt specific outreach requirements if current outreach efforts are not effectively providing Lifeline/Link-Up information to low-income customers.

The Commission has previously stated it seeks to encourage states to generate Lifeline support. California has a successful outreach program administered by the ULTS Marketing Board (ULTSMB). Two committees, the ULTS Administrative

[12] Letter from Jack Leutza, California Public Utilities Commission, to William F. Caton, FCC, Dated January 28, 1997 (California PUC January 28 ex parte).

Committee and the ULTS Marketing Board administer California's ULTS program. The ULTSMB was established in 1997.[14] The ULTSMB began operations in January 1998 and in August 1998 Resolution T-16176 adopted the board's charter.

The ULTSMB currently consists of eight members, with four vacancies yet to be filled. The eight members consist of six representatives from the telephone industry and two members from Community Based Organizations. The CPUC has also appointed a CPUC staff liaison to the Board. However, in accordance with state Senate Bill (SB) 669, enacted during the 1999 legislative session, the Commission is currently examining how California's public programs' boards and committees should be structured in the future.

The purpose of the ULTSMB is to market the ULTS program to eligible, non-participating low-income households in California. It is responsible for devising competitively neutral marketing strategies and overseeing the implementation of ULTS marketing campaigns. In 2000, $6.2 million was allocated for ULTSMB board program costs. Of that $6.2 million, $5 million was used for contracting with a public relations firm to develop interim marketing and outreach campaigns. The interim campaigns are intended to inform promote and increase the awareness of the ULTS program consistent with the goal of achieving a 95% telephone subscriber rate, particularly among qualified non-participating low-income households in the state.

Once again, in an area such as outreach, the Commission should not adopt any one-size-fits-all federal outreach requirement. States are better equipped to determine the kind of outreach which best suits the needs of their consumers, taking into consideration, for instance, the state's income levels, ethnic makeup, demographic patterns, and factors

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[13] G.O. 153, 5.12.
[14] CPUC Decision No. (D.) 97-10-088.

affecting low-income subscribership. Moreover, the Commission has concluded that it is important for states to retain a role in assessing and responding to low subscribership levels. In addition, because many methods exist, the Commission should not prescribe methods states must use for outreach.

## VI. CONCLUSION

For the reasons set forth herein, California recommends that the FCC not change the eligibility criteria for federal or state Lifeline/Link-Up. In addition, states should have the discretion to determine whether to verify eligibility. Lastly, the Commission should not adopt any one-size-fits-all federal outreach requirement.

Respectfully Submitted,

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